



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 12th day of December, 2002

Arthur Solomon and Native Air Charters, Inc.

Served: December 12, 2002

**Violations of 49 U.S.C. §§ 41101, 41712, and
14 CFR Part 380.**

OST-2002-12273

CONSENT ORDER

This order concerns violations by Mr. Arthur Solomon and Native Air Charters, Inc. (NAC) of various provisions of 14 CFR Part 380, the Department's rule on Public Charters. Mr. Solomon's and the company's conduct also violated 49 U.S.C. § 41101, which mandates that air transportation may only be held out and provided pursuant to appropriate authority conferred by the Department, and 49 U.S.C. § 41712, which prohibits unfair and deceptive trade practices and unfair methods of competition. This order directs Mr. Solomon and NAC to cease and desist from further similar violations and assesses a compromise civil penalty based on its recent violations.

Under section 380.25 of the Department's Public Charter rules, 14 CFR 380.25, a charter operator cannot solicit, sell, or operate a Public Charter without having first filed a Public Charter prospectus that conforms to the requirements of section 380.28, of those rules, 14 CFR 380.28, and that has been approved by the Department. Soliciting, selling, or operating a Public Charter without having first filed a Public Charter prospectus not only violates section 380.25 and, consequently 49 U.S.C. § 41101, which prohibits unauthorized sale of air transportation, but also constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712 and section 380.27 of the Public Charter rules, 14 CFR 380.27. The Public Charter rules are designed to, among other things, protect consumers' funds and expectations. See, e.g., 14 CFR 380.34.

Between January and June 2002, NAC, a Florida corporation under the direction and control of Mr. Solomon, advertised on its website, www.nativeaircharters.com, charter air service from New York to Aruba, Newark to Aruba, and Boston to Aruba. In addition, NAC sold tickets and accepted payments for flights to and from Aruba that were to commence in June

2002. NAC never filed a Public Charter prospectus with the Department nor did it have a written contract with a direct air carrier covering the flights at the time of the advertisements. Moreover, on June 29, 2002, NAC conducted an unauthorized charter from Worcester, Massachusetts, to Aruba using Falcon Air Express (Falcon) as its direct carrier.¹ NAC's advertising and sales of these trips, and its operation of the flight in question prior to filing a prospectus with the Department, violated section 380.25(a) and 49 U.S.C. § 41101 and constituted unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712 and section 380.27. In addition to the unauthorized advertising, sales, and operations relating to the flights in question, NAC failed to deposit any Public Charter participants' payments into an escrow account at a depository bank as required by section 380.34(b)(2) of the Department's Public Charter rules, thereby placing those consumers' funds at risk.

In mitigation, Mr. Solomon and NAC state that they had an agreement with Dream Air to perform the flight from Boston to Aruba via Newark, on June 29, 2002.² They state that they were informed by Dream Air that NAC could begin marketing the flight. Mr. Solomon alleges that Dream Air misled him and in order to salvage the vacation for the consumers, NAC entered into a contract with Falcon to transport the consumers at a cost of over \$60,000. With regard to the NAC website, Mr. Solomon states that when he was informed by the Department that there were problems with the website, he immediately removed everything from the site that was improper. Mr. Solomon and NAC also state that NAC presently has a bulk fare contract agreement with a scheduled carrier to insure that all of NAC's passengers are carried properly. In addition, Mr. Solomon and NAC state that NAC will file a Public Charter prospectus with the Department for any future Public Charter flights that it conducts.

The Aviation Enforcement Office views seriously the obligation of all persons and companies to observe the statutory prohibitions on unauthorized charter operations. Accordingly, we have carefully considered all of the information available, including that provided by Mr. Solomon and Native Air Charters, Inc., but continue to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Aviation Enforcement Office and Mr. Solomon and Native Air Charters, Inc. have reached a settlement of this matter. Without admitting or denying the violations described above, Mr. Solomon and Native Air Charters, Inc. consent to the issuance of this order to cease and desist from future violations of 14 CFR Part 380, 49 U.S.C. §§ 41101 and 41712 and to the assessment of \$30,000 in compromise of potential civil penalties otherwise assessable, half of which will be forgiven if they commit no further violations of the relevant provisions or this order over the next year. The Aviation Enforcement Office believes this compromise is appropriate, serves the public interest, and creates an incentive for all individuals and Public Charter operators to comply fully with the requirements of 14 CFR Part 380, 49 U.S.C. §§ 41101 and 41712.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

¹ According to Falcon, this charter was conducted after NAC misrepresented to Falcon that the flight was a single entity charter. A single entity charter is a charter the cost of which is borne by the charterer and not by individual passengers, directly or indirectly. (14 CFR 212.2)

² Dream Air, however, does not have economic authority as an air carrier.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Mr. Arthur Solomon, personally, and Native Air Charters, Inc., violated 14 CFR Part 380 and 49 U.S.C. § 41101 by holding out and performing Public Charter air transportation without filing a charter prospectus with the Department;
3. We find that by holding out and performing Public Charter air transportation without filing a charter prospectus, Mr. Solomon, personally, and Native Air Charters, Inc. engaged in an unfair and deceptive practice in violation of 14 CFR 380.27 and 49 U.S.C. § 41712;
4. Mr. Arthur Solomon, personally, and Native Air Charters, Inc., and all other entities owned and controlled by, or under common ownership and control with Native Air Charters, Inc., and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR Part 380, and 49 U.S.C. §§ 41101 and 41712;
5. Mr. Arthur Solomon, personally, and Native Air Charters, Inc., jointly and severally, are assessed a civil penalty of \$30,000 in compromise of the civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 above. Of the assessed penalty, \$7,500 is due and payable within 30 days of the date of issuance of this order and \$7,500 is due and payable within 90 days of the date of issuance of this order. The remaining \$15,000 shall be suspended for one year following the issuance of this order, and then forgiven, unless, during this time period, Mr. Arthur Solomon or Native Air Charters, Inc., violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately. Failure to pay the penalty as ordered will subject Mr. Arthur Solomon, personally, and Native Air Charters, Inc., jointly and severally, to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure to comply with this order; and
6. Payment of the civil penalty described above shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the attached instructions.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

By:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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